

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1524 of 1997

with

Civil Application No. 4896 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

PRATAPSIKH SIDHUBHA JADEJA

Versus

MANSING BAVAJIBHAI JADEJA

Appearance:

MR HM PRACHCHHAK for Petitioner

MR DH WAGHELA for Respondent No. 1

MR BP MUNSHI for Respondent No. 2

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 23/09/97

ORAL JUDGEMENT

1. Admit. Mr. D.H. Waghela and Mr. B.P. Munshi appear and waive service of admission for and on behalf of the respective opponents. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.

2. The appellant before this court is directed to deposit the full awarded amount of Rs. 12,400/-. The appellant is aggrieved thereby inasmuch as it is his contention that even if finding on issue No.1 is accepted, finding recorded by the Tribunal on issue No.2 is absolutely an halting finding based on oral as well as documentary evidence. He has specifically invited my attention to the discussion made by the Tribunal in para-7 of the judgment and there appears to be some substance in the submission made by learned counsel. However, in view of the fact that there is a clear positive finding based on documentary evidence on issue No.1 that the claimant's proved that he sustained injuries due to rash and negligence driving of the driver of the vehicle involved in the accident, the liability shall have to be fastened on Jadeja Pratapsinh Sidhubha. Unfortunately, the Tribunal has resorted to a lot of guess work having recorded the finding about rash and negligent driving and has not tried to pin point its attention on as to whom actually the vehicle belongs. In view of the halting finding given by the Tribunal as regards the ownership of the vehicle involved in the accident, in my opinion, the ends of justice would be met if the amount awarded is reduced to Rs. 9,000/-. The factum of acquittal of the appellant in the criminal case rightly would not assume any importance. The complaint which is lodged by the police is exhibited and the statement of the injured is also exhibited at Exhibit 56. From such documents, which are already exhibited coupled with the evidence of the claimant, it would be just and proper to award him the amount of Rs. 9,000/- as on all other issues, the findings of the Tribunal can be said to be halting finding and not based on any documentary evidence excepting the oral evidence of the claimant. In view of the aforesaid, the Appeal partially succeeds to the aforesaid extent only. There shall be no order as to costs.

3. The amount which is deposited in excess in this court is directed to be returned in the name of the appellant by account pay cheque by the Registrar within two weeks from today. The crossed order cheque be drawn in favour of the party may be handed over to the advocate Mr. H.M. Prachchhak.

4. In view of the order passed in the main matter, there shall be no order on Civil Application 4896 of 1997 and the order passed in such Civil Application therefore would stand modify to the aforesaid extent as stated in

the final judgment of Appeal.

pnn